

REMARKS/ARGUMENTS

The following remarks are submitted in response to the Office Action dated August 27, 2003. The pending claims overcome the rejection of claims 1-25 based on the applied references. New claims 26-29 have been added. Reconsideration is respectfully requested. No new matter has been added.

Pending Rejections

Claims 1, 2, 4-7, 9, 10, 12-15 and 22 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,752,186 to Malackowski et al. (hereinafter "Malackowski").

Claims 1, 8, 9 and 16-19 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,496,704 B2 to Yuan (hereinafter "Yuan").

Claims 3, 11 and 23-25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Malackowski.

Claims 20, 21 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Yuan.

Remarks to §102 Rejections

Applicants respectfully disagree with the Examiner that the Malackowski and/or Yuan references anticipate the pending claims. "A prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, *every limitation of the claim.*" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The *identical invention* must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226 (Fed. Cir. 1989). "Absence from the reference of *any* claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Malackowski and Yuan fail to identically disclose at least one limitation of each of the pending independent claims, and thus cannot anticipate the pending claims. For example, the following independent claim limitations--shown with the allegedly

anticipating excerpts referenced by the Examiner--are not disclosed by Malackowski and/or Yuan:

Claim 1-- *"method for broadcasting radio programming over a cellular transmission network"* Malackowski (Col. 1, lines 5-15) and Yuan (Col. 4, lines 15-42)

Claim 9-- *"providing radio programming in an appropriate format"* Malackowski (Col. 2, lines 22-34) and Yuan (Col. 5, lines 49-55)

Claim 17-- *"an access device for enabling radio programming to be accessible over a processor based network"* Yuan (Col. 6, lines 15-23)

Claim 22-- *"a receiver for receiving a radio programming signal broadcast over a cellular transmission network"* Malackowski (Col. 6, lines 7-14)

Applicants respectfully submit that the excerpts cited by the Examiner do not teach or suggest the elements they purportedly anticipate. In fact, the excerpts concern systems and methods that are wholly distinguishable from the pending invention, which relates to systems and methods for providing radio programming over a cellular transmission network. More specifically, the present invention operates to broadcast radio programming beyond the limits of traditional broadcasting systems and methods by further broadcasting the programming over a processor based network (e.g., the Internet) and at least one cellular telephone network.

In contrast, Malackowski and Yuan disclose far different systems and methods. Malackowski, for example, is directed to an information fulfillment system and method for providing information to a caller having a wireless communication device. Specifically, a caller is able to input an access code into his cell phone (i.e., abbreviated dialing) to obtain automatic or live-operator delivery of requested information. The caller may be prompted to enter the code, for example, upon driving by a billboard advertising a particular product or service associated with the code. Applicants submit that Malackowski's disclosure does not teach or suggest the broadcasting of radio

programming over a processor based network and a cellular transmission network, as claimed by the present invention.

Yuan is similarly distinguishable but relates to a system and method for allowing internetwork data transfers to mobile data devices. In particular, the invention includes systems for internetworking a cellular digital packet date (CDPD) network system with an Internet protocol network, and more particularly with a Mobile Internet Protocol Network. In one aspect, the Yuan invention can be understood as systems that allow mobile computing systems to negotiate the exchange of data across two disparate networks by providing within at least one of the networks a system that redirects the destination of data packets in order that the redirected data packets get forwarded to the changing locations of the Mobile Computing system. In another aspect, the invention can be understood as systems that allow a Mobile computing system to negotiate the exchange of data across disparate networks by providing a redirecting element within one of the networks that will redirect data packets destined for that mobile computing system to the transient location of the computing element. See, Abstract of Yuan. Applicants submit that Yuan's disclosure does not teach or suggest the broadcasting of radio programming transmission over a processor based network and a cellular network, as claimed by the present invention.

Accordingly, the excerpts of Malackowski and Yuan, cited by the Examiner, have no relation to the pending invention, fail to disclose the claimed invention, and are thus improperly relied upon in support of the §102 rejections. Thus, Applicants respectfully request that the §102 rejections be withdrawn.

Remarks to §103 Rejections

Applicants respectfully submit that the §103 rejections have been overcome by the above remarks.

Accordingly, in view of the above remarks, Applicants submit that independent claims 1, 9, 17 and 22 are allowed over the art of record. Each remaining claim

depends from either independent claim 1, 9, 17 or 22 and is therefore allowable over the art of record for at least the reasons set forth above.

CONCLUSION

Since the cited references, taken either singly or in combination, fail to teach or suggest the combinations set forth in the pending claims, and further fail to provide any motivation or suggestion of the desirability of modifying the structures or methods to arrive at the claimed combinations, Applicants submit that the pending claims are allowable over the cited references. Accordingly, Applicants respectfully request that the Examiner withdraw his rejections, allow the pending claims and pass the application to issue.

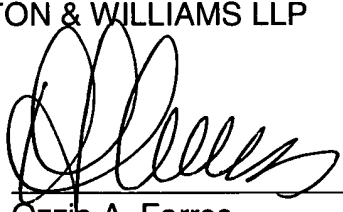
If the Examiner believes that a telephone conference or interview would advance prosecution of this application in any manner, the undersigned stands ready to conduct such a conference at the convenience of the Examiner.

If there are any fees due under 37 C.F.R. §1.116 or §1.117 which are not enclosed herewith, including any fees required for extension of time under 37 C.F.R. §1.136, please charge such fees to our Deposit Account No. 50-0206.

Respectfully submitted,

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